IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5708 of 1987
with
CIVIL APPLICATION NO. 13090 OF 2001

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VUNDRAVANDAS PITAMBARDAS
Versus
UPADHYAYA OR HIS SUCCESSORF IN THE OFFICE

Appearance:
MR HARIN P RAVAL for Petitioner No. 1-11
MS ARCHANA RAVAL, AGP, for Respondent No. 1-2,4
MR AMAR D MITHANI for Respondent No. 3

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 09/07/2003

ORAL JUDGEMENT

(Per : ACTING CHIEF JUSTICE MR.JN BHATT)

By this petition under Article 226 of the Constitution of India, the petitioners have questioned the legality and validity of the action of the respondent-authority in not permitting them to carry on their business in the wooden

cabins constructed by them on a land of the Panchayat. Pursuant to the resolution of respondent No.3, the then Nagar Panchayat, Talala (now Gram Panchayat, Talala), dated 24.4.2008, the land, on the rental basis, was given to the petitioners, for the purpose of construction of cabins, on certain terms and conditions. The extent and area of the land allotted for that purpose is admeasuring 12' x 12' in so far as petitioner No.1 is concerned and 10' x 8' in so far as the rest of the petitoners are concerned. The decision of respondent No.3 was pursuant to the applications made by the petitioners for the grant and allotment of land on rental basis.

The petitioners have, inter alia, contended that they are paying rent regularly to the Panchayat and the last payment was made for the year 1987-88, i.e. for the period from April 1987 to March 1988. Respondent No.3-Panchayat passed a resolution on 1.12.1984 for regularisation. Thus, they continued to enjoy and occupy as lessees even thereafter from 1987-88.

It has been averred that the respondents had, thereafter, started harassing the cabin holders in spite of the fact that they were in legal occupation in respect of the cabins. The land allotted to them for the purpose of raising cabins and for business is of the ownership of the Panchayat and not the Government. It is also averred that the cabins constructed on the allotted land are not situated on the main road and there is no adverse impact or effect on the traffic or creating any other problem. The Collector concerned had given directions to regularise the possession of the cabin holders. In short, the main theme and core of the petition is that the petitioners are in lawful possession as lessees and they are paying rent regularly to respondent No.3-Panchayat. However, the petitioners have further contended that the respondents are trying to interfere with the possession and enjoyment of the cabins held and occupied by the petitioners and such an action would be illegal, ultra vires, inequitable, improper and unjust and since the small cabins are the main source of their bread, they will be ruined if the respondent authority is not restrained from harassing and disturbing the petitioners in their peaceful and lawful enjoyment of the cabins. It is in this context and on those averments that the petitioners have sought relief against the respondents permanently restraining them from interfering with their possession.

Respondent No.3-Panchayat has appeared and relied on affidavit-in-reply to counter the averments made in the

petition. It is stated in the affidavit-in-reply filed by the Sarpanch-cum-Talati that, earlier, there was a Nagar Panchayat and, thereafter, it became Gram Panchayat and he works as the Sarpanch. It is, inter alia, contended that the cabins of the petitioners and others are situated and installed near the Bus Stand Chowk, near Panchayat Bhavan, which is a locality having thick traffic since Talala is a small town and there are traffic problems. The State Highway No.26, known as Veraval-Sasan, is passing through the middle of the town. It is, therefore, the case of respondent No.3 that the errection of cabins by the petitioners is obstructing the traffic. Since there is heavy traffic of vehicles near the place of the cabins of the petitioners, it has resulted into traffic hazards.

The affidavit-in-reply has also elaborately articulated the resultant problems on account of the cabins of the petitioners. It is also the contention of the respondent that the cabin holders occupy large place in front of their cabins, encroaching upon public place. The cabins of the petitioners are obstruction to pedestrians as well as vehicular traffic. Respondent No.3 has further stated that the cabins not only obstruct the traffic and pedestrians but also create problems of traffic congestion and putting the members of the public at large to great difficulties.

Therefore, the contention advanced by the respondents is that the cabins in village Talala is no longer res integra in view of the Division Bench judgment of this Court rendered on 7.4.1983. On 25.3.1982, about 40 cabins came to be removed and 21 persons whose cabins came to be removed filed petition in this Court. It is denied that the cabins were removed without following the process of law. In order to accommodate them, the Talala Gram Panchayat has also constructed 146 cabins in the proposed shopping centre, which is at about 300 yards.

It is also contencded that, subsequently, Special Civil Applications No.5383, 5386 and 5388 of 1984 came to be filed by the cabin holders of Talala were, ultimately, withdrawn by them in view of the alternative accommodation provided in the shopping centre. Special Civil Applications No.3589 of 1982 and 3719 of 1982 filed by identically placed cabin holders of Talala came to be dismissed by a common judgment and order dated 5.8.1994 of this Court [Coram: M.B. Shah and M.R. Calla, JJ. (as Their Lordships then were)]. It is, therefore, contended that the petition is covered by the Division Bench judgment of this Court.

Respondent No.3 has also raised the contention that since 1.4.1989, the Panchayat has not collected rent from anyone of the petitioners; the Panchayat can grant lease for a period not exceeding three years; and that no lease subsists in favour of the cabin holders or the petitioners.

It is also contended that Civil Suits, including Regular Civil Suit No.353 of 1981, came to be filed in the Court of Civil Judge, Veraval, and after hearing both the parties, the interim relief came to be vacated by the Civil Court in all the suits as well as appeals were also dismissed by the District Court on 27.3.1985. This High Court also dismissed Civil Revision Applications No.724 to 730 filed against the judgments of the lower Courts on 15.4.1989. It is in this context that it has been contended that the petitioners cannot be allowed to agitate in different forums much less, now, under the umbrella of Article 226 of the Constitution.

In short, the main contention out of the affidavit-in-reply which emerges is that the petitioners are not in lawful enjoyment and possession of the land and the superstructure in the form of wooden cabins. They are unauthorisedly occuping since 1.4.1989. The petitioners held the land without authority and their occupation of lands of their cabins is nothing but encroachment as the Panchayat has not even taken rent since 1.4.1989 from anyone of he petitioners. The petitioners have already availed alternative remedy of suit and, therefore, the maintainability of the writ petition is also challenged.

We have heard the learned Advocate, Mr. Raval, for the petitioners and the learned Assistant Government Pleader for the respondents. We have also examined the entire record. During the course of the hearing, learned Advocate, Mr. Raval, has drawn our attention to the fact that, during the pendency of the petition, the cabins of the petitioners were removed without any notice. However, he has also submitted that the cabins, thereafter, have been restored and the petitioners are in use and enjoyment of the cabins on the land allotted to each one of them.

In view of the restoration of the cabins of the petitioners and considering the facts and circumstances emerging from the record and also the type and the nature of the relief, in our opinion neither lis, nor any grievance or any breach of right would survive.

Therefore, at this stage, the petitions are infructuous.

Of course, learned Advocate, Mr. Raval, has submitted that the cabins of the petitioners were unauthorisedly removed without any notice, despite the order of the Court. He has further submitted that in order to safeguard the interest of the cabin holders, anticipated removal unauthorisedly should be protected. In so far as the former submission is concerned, there can hardly be any quarrel about it. Rule of law is the heart and hub of the entire democratic mechanism of the governance and the directions, orders or decisions of the Court must be observed. Whosoever is guilty or violater of the directions, observations or mandates of the Court can never be leniently dealt with. We are sure, the voice raised by us in this context would not be a cry in the wilderness and the same shall reach the respondents herein. However, later part of the submission is not only premature, anticipated, based on surmise or notional premise, but also hypothetical and academic, to which the Court, much less under Article 226, would dwell upon, determine or adjudicate upon. With these observations, the petition shall stand disposed of. Rule is discharged without any order as to costs.

In view of the disposal of the main Special Civil Application, Civil Application No.13090 of 2001 does not survive. It is disposed of accordingly. Notice is discharged without any order as to costs. Interim relief is vacated.

[J.N. BHATT, ACTG. C.J.]

[A. L. DAVE, J.]

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